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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 PHILIPS ORAL HEALTHCARE, INC.,  
10 f/k/a OPTIVA CORPORATION,

11 Plaintiff,

12 v.

13 FEDERAL INSURANCE COMPANY,

14 Defendant.

CASE NO. C98-1211JLR

ORDER

15  
16 This matter comes before the court on Plaintiff Philips Oral Healthcare, Inc.’s  
17 (“Philips”) motion for proposed judgment (Dkt. # 589). Having read and considered all  
18 of the papers filed in support of and opposition to this motion, the court GRANTS  
19 Philips’ motion and directs the clerk to enter judgment accordingly. The court provides  
20 the following explanation for the terms imposed.

21 Defendant Federal Insurance Company (“Federal”) does not dispute that Philips  
22 paid Gillette \$5.5 million to settle the underlying litigation, or that Philips is entitled to  
23 post-judgment interest under 28 U.S.C. § 1961(a). Rather, Federal disputes whether  
24 Philips is entitled to prejudgment interest and whether it can recover attorneys’ fees for  
25 certain activities.

26 Despite Federal’s arguments to the contrary, the court finds that Philips’  
27 indemnification claim is “liquidated” and therefore awards Philips prejudgment interest.  
28 In Washington, a party is entitled to prejudgment interest on “liquidated” claims “where

1 the evidence furnishes data which, if believed, makes it possible to compute the amount  
2 with exactness, without reliance on opinion or discretion.” Prier v. Refrigeration Eng’g  
3 Co., 442 P.2d 621, 626 (Wash. 1968). Federal argues that Philips’ indemnity claim is  
4 “unliquidated” because it includes the value of Philips’ counterclaim against Gillette,  
5 which is undetermined. The fact that the underlying claim may have been unliquidated  
6 “does not negate the fact that the amount sought . . . as indemnity was liquidated.” King  
7 County v. Puget Sound Power & Light, 852 P.2d 313, 315 (Wash. Ct. App. 1993). “[I]t  
8 is widely acknowledged that a settlement made in an underlying civil action represents a  
9 liquidated amount with regard to the subsequent indemnity claim.” Id. (internal quotation  
10 and citations omitted). Thus, the \$5.5 million Philips paid Gillette to settle the  
11 underlying litigation (for which Federal is liable as Philips’ insurer) constitutes a  
12 liquidated claim with prejudgment interest accruing at the rate of 12% per annum from  
13 the date Philips paid the settlement amount (December 18, 2001) through the date of  
14 judgment. Id.; RCW § 19.52.010(1).

15 Both parties agree that Phillips is entitled to attorneys’ fees under Olympic  
16 Steamship Co. v. Centennial Ins. Co., 811 P.2d 673 (Wash. 1991). Federal argues,  
17 however, that Philips is limited to seeking attorneys’ fees related to “the *establishment* of  
18 coverage” and not “claim issues” such as the availability of allocation, the valuation of  
19 Philips’ counterclaim, and the application of estoppel. Def. Resp. at 6 (emphasis in  
20 original). Given that Philips has not yet filed a petition seeking attorneys’ fees and it is  
21 unclear what fees Philips is actually seeking, the court declines ruling prematurely on this  
22 issue. The court notes, however, that Philips is entitled to attorneys’ fees based on  
23 Federal’s refusal to provide coverage and this court’s ruling that coverage exists.  
24 Leingang v. Pierce County Med. Bureau, Inc., 930 P.2d 288, 295 (Wash. 1997) (“If a  
25 claim is denied on the basis of an alleged lack of coverage and a court later determines  
26 there is coverage, then the case would fall under the rule of Olympic Steamship.”).

27 Federal requests that the court allow it an opportunity to (1) respond to Philips’ fee  
28 petition, (2) conduct additional discovery on the reasonableness of Philips’ claimed

1 attorneys' fees and costs, and (3) conduct an evidentiary hearing on Philips' fee petition.  
2 Federal may file a response to Philips' petition for attorneys' fees and seek discovery  
3 consistent with terms imposed by the judgment. The briefing filed in support of and  
4 opposition to Philips' fee petition shall not exceed 12 pages.<sup>1</sup> Before seeking discovery  
5 on Philips' claims for attorneys' fees and costs, Federal must seek the court's permission  
6 and explain the need for such discovery. Federal shall not seek discovery until after  
7 Philips has filed its fee petition with the court. The court will consider whether an  
8 evidentiary hearing is required after receiving the parties' briefing.

9 Finally, Federal requests that the court include a finding in the judgment regarding  
10 the "reasonableness" of the underlying settlement. The court declines to issue such a  
11 finding at this late stage in the litigation when it has not been briefed by either party and  
12 Federal previously withdrew its summary judgment motion on this issue. Minute Entry,  
13 Dkt. # 508 (Dec. 22, 2004). Moreover, the one authority Federal relies on for the  
14 proposition that the court must find the settlement "reasonable" is inapposite because it is  
15 in the "context of a bad faith failure to settle claim" rather than a coverage claim, such as  
16 here, where Federal denied coverage and remained "neutral" on settlement. Chausee v.  
17 Maryland Cas. Co., 803 P.2d 1339, 1342, 1343-44 (Wash. Ct. App. 1991) (holding  
18 factors used to determine whether a settlement is reasonable in a contribution claim  
19 should be applied in the context of a bad faith claim); Def. Reply Re: Judicial Estoppel or  
20 Collateral Estoppel, Dkt. # 309 at 2.

21 Dated this 20th day of June, 2005.



JAMES L. ROBART  
United States District Judge

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27 <sup>1</sup>This limitation does not apply to declarations or exhibits submitted in support of the  
28 briefing.